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No. 97-765

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

MARY ANNA GNADT,
Petitioner,

v.

ERNEST G. CASTRO, *et al.*,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

REPLY TO BRIEF IN OPPOSITION

JOHN M. CLIFFORD*
MONA LYONS
Clifford, Lyons & Garde
1620 L St., N.W., Suite 625
Washington, DC 20036
(202) 289-8990
* *Counsel of Record*

Of Counsel:
STEPHEN B. MERCER
8605 Cameron Street, Suite M-8
Silver Spring, MD 20910
(301) 585-2144

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4 pp

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Respondents contend that unequivocal and undisputed threats to "fry" a former employee for filing an EEOC charge and "to make sure that [she] is not able to get a job" are not actionable under Title VII. According to Gnadt's former employers, unless and until such threats result in measurable professional harm, "antiretaliation protections do not exist" and the threatened employee can be afforded no relief. *Brief In Opposition*, at p. 14. Respondents' contentions cannot be reconciled with either the remedial provisions of Title VII or the deterrent purposes of its antiretaliation provision.

Significantly, all of the authorities relied upon by respondents in support of those contentions predate the enactment of the Civil Rights Act of 1991. Since that

time, however, the remedies available under Title VII have included compensatory damages for "emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses," 42 U.S.C. § 1981b(3), and punitive damages for conduct which evidences "malice" or "reckless indifference to the federally protected rights of an aggrieved individual." 42 U.S.C. § 1981b(1). Recovery of such damages is "in addition" to the equitable remedies such as backpay which had previously been available under the statute. 42 U.S.C. § 1981a(1).[1] Under Title VII's comprehensive remedial scheme, as amended, professional harm is not a prerequisite to recovery of compensatory or punitive damages for an employer's incontrovertible violation of the antiretaliation provision of the statute.

As this Court observed in *Robinson v. Shell Oil Co.*, 117 S.Ct. 843, 848 (1997), "a primary purpose" of the antiretaliation provision of Title VII is "[m]aintaining unfettered access to statutory remedial mechanisms." Whether or not professional harm results, threats intended to coerce a former employee into retreating from her use of those mechanisms fetter that access and, if the threats achieve their intended result, block it. Denying any and all relief to a complainant who presents uncontroverted proof of such threats thus directly undermines the purposes of the antiretaliation provision of the statute.

This Court recently granted the petition for a writ of certiorari in *Burlington Industries, Inc. v. Ellerth*, 123 F.3d 490 (7th Cir. 1997), *cert. granted*, 66 U.S.L.W. 3490 (U.S. January 27, 1998) (No. 97-569), to review the

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[1] The full text of these remedial provisions appears at pages A.11 to A.13 of the appendix to the petition for writ of certiorari.

question of whether *quid pro quo* sexual harassment by a supervisor requires tangible effects on the terms and conditions of employment, or whether threatened effects are sufficient to result in liability for the employer. This case poses the related issue of whether any legal or equitable relief is available to a former employee who is "scared to death" by threats made by her former employer because she has complained to the EEOC, but who has not suffered any demonstrable economic or professional harm as a result of those threats.

Because of the unique importance of its antiretaliation provision to the enforcement of Title VII and for the other reasons set forth in her petition, Gnadt requests that the Court review the judgment of the court below denying her any such relief. Alternatively, Gnadt asks that the Court defer consideration of her petition until the Court decides the case of *Burlington Industries, Inc. v. Ellerth*.

Respectfully submitted,

JOHN M. CLIFFORD*
MONA LYONS
Clifford, Lyons & Garde
1620 L Street, N.W.
Suite 625
Washington, DC 20036-5631
(202) 289-8990

* *Counsel of Record*